

**OFFICE OF THE ARMY GENERAL COUNSEL
FISCAL LAW COURSE**

CONTINUING RESOLUTIONS

I. CONSTITUTIONAL FOUNDATION

1. Article I, Section 8, Clause 1. Congress has the power to tax and spend.
2. Article I, Section 9, Clause 7. No money shall be drawn from the Treasury, but in consequence of appropriations made by law.

II. STATUTORY FOUNDATION

1. The Antideficiency Act
 - a. 31 U.S.C. § 1341. Prohibition on obligations or expenditures in excess of appropriations and contracting in advance of appropriation.
 - b. 31 U.S.C. § 1342. Prohibition on government employees accepting voluntary services.

III. REGULATORY FOUNDATION

AR 37-1

IV. DEFINITIONS

A. CONTINUING RESOLUTIONS

1. "Legislation enacted by Congress to provide budget authority for Federal agencies and/or specific activities to continue in operation until the regular appropriations are enacted. Continuing resolutions are enacted when action on appropriations is not completed by the beginning of a fiscal year. The continuing resolution usually specifies a maximum rate at which the obligations may be incurred, based on the rate of the prior

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year, the President's budget request, or an appropriation bill passed by either or both houses of Congress." U.S. General Accounting Office, Glossary of Terms Used in the Federal Budget Process, PAD-81-27, p. 44.

2. "An interim appropriation until permanent appropriations are enacted. Authorizes continuation of normal operations at a rate not to exceed the latest congressional action or the previous year's rate and no new starts or expansions to a program." Army Regulation (AR) 37-1, Glossary, Section II, Terms.

B. FUNDING GAPS

1. A legal and budgetary limbo during which Federal agencies have no authority to incur obligations or to make payments. U.S. General Accounting Office, Funding Gaps Jeopardize Federal Government Operations, PAD-81-31, March 3, 1981.
2. It occurs when there is no appropriation for a program because Congress has not enacted one or the President has vetoed it. CETA Appropriation Under 1979 Continuing Resolution, 58 Comp. Gen. 530, 532 (1979).

V. GOVERNMENT OPERATIONS WITHOUT A CONTINUING RESOLUTION

A. POTENTIAL ANTIDEFICIENCY ACT VIOLATIONS

1. The Comptroller General opined that permitting agency employees to work during any period for which Congress has not enacted an appropriation for the pay of these employees violates the Antideficiency Act, 31 U.S.C. § 1341. Representative Gladys Noon Spellman, B-197841, March 3, 1980 (unpub.).

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2. The Attorney General opined that during periods without appropriations, the only thing an agency can do is bring about the orderly termination of its functions. Opinion of the Attorney General, April 25, 1980.
3. The Office of Management and Budget (OMB) has issued guidance and instructions on action to be taken during an appropriations hiatus. OMB Bulletin 80-14, August 28, 1980; OMB Director's Memo, November 17, 1981.
4. Agencies must have plans for an orderly shutdown that reflect the policy and guidance provided by OMB.

B. PERMISSIBLE ACTIVITIES

1. In the event of a funding gap, agencies may continue:
 - a. Activities otherwise authorized by law. 31 U.S.C. § 1342, 41 U.S.C. § 11,
 - b. Activities that protect life and property, and
 - c. Activities necessary to begin a phasedown of other activities.
2. Congress limited the range of activities permissible during a funding gap in a 1990 amendment to the Antideficiency Act. Excluded are "ongoing, regular functions of the government the suspension of which would not immediately threaten safety of human life or protection of property." Pub. L. No. 101-508, Sec. 13213(b); 104 Stat. 1388-621 (1990).

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3. Examples of permissible activities:
- a. National security, including conduct of foreign relations essential to national security or safety of life and property.
 - b. Payments and performance of contract obligations under no-year and multi-year authority, or expenditures from other funds still available for those purposes.
 - c. Essential protection of life and property.
 - (1) Medical care of inpatients and emergency outpatient care.
 - (2) Activities essential to ensuring public health and safety, including safe use of food, drugs, and hazardous materials.
 - (3) Border and coastal protection and surveillance.
 - (4) Protection of Federal lands, buildings, waterways, equipment, and other Government property.
 - (5) Care of prisoners and other persons in U.S. custody.
 - (6) Law enforcement and criminal investigations.
 - (7) Emergency and disaster assistance.
 - (8) Activities essential to preservation of essential elements of money and banking system, including borrowing and tax

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collection activities of the
Treasury.

- (9) Activities that ensure production of power and maintenance of power distribution systems.
- (10) Activities necessary to maintain protection of research property.

4. AR 37-1 provides guidance.

- a. Army operations during a funding gap.
AR 37-1, para. 9-5(1).
 - (1) Obligation may continue in the new fiscal year.
 - (2) All personnel will continue to report to work, unless otherwise instructed.
 - (3) The Army Budget Office will issue detailed guidance on actions to be taken during each funding gap.
- b. Army disbursements during a funding gap.
AR 37-1, para. 13-6(b).
 - (1) Emergencies involving death or personal hardship.
 - (2) Initial health and comfort needs of the active Army, Army National Guard, and Army Reserve.
 - (3) Mission-essential travel.
 - (4) PCS travel entitlement.
 - (5) Recruitment, retention, and transition of military personnel

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expenses, including bonuses for
reenlistment.

(6) Revolving fund operations, with
certain restrictions.

- c. Military and civilian payrolls for work performed during a funding gap are not covered by AR 37-1, para. 13-6(d).
- d. Specific instructions concerning personnel payrolls will be issued as needed. All personnel will report for duty, absent instructions to the contrary. AR 37-1, para. 13-6(d).

5. Administrative problems.

- a. Lack of information.
- b. Efficient operation of government is clearly compromised. U.S. General Accounting Office, Government Shutdown: Permanent Funding Lapse Legislation Needed, GDD-91-76, June 6, 1991; U.S. General Accounting Office, Funding Gaps Jeopardize Federal Government Operations, PAD-81-31, March 3, 1981.

VI. GOVERNMENT OPERATIONS WITH A CONTINUING RESOLUTION

A. RELATIONSHIP OF CONTINUING RESOLUTION TO
APPROPRIATIONS ACT.

- 1. When signed into law by the President, a Continuing Resolution has the same force and effect as an appropriations act and its provisions are mandatory on Federal officials. Oklahoma v. Weinberger, 360 F. Supp. 724 (W.D. Okla. 1973), AR 37-1, para. 13-6.

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2. Both a Continuing Resolution and an appropriations act provide budget authority.
3. Appropriations usually provide specific sums of money. Continuing Resolutions usually provide "such amounts as may be necessary" for continuing projects or activities at a specified "rate for operations."

B. RATE FOR OPERATIONS

1. Congress may specify any rate, formula or combination.
 - a. Current rate is equivalent to the total amount of money which was available for obligation for an activity during the Fiscal Year previous to the one for which the Continuing Resolution is enacted. National Commission for Student Financial Assistance--Fiscal Year 1982 Funding Level 61 Comp. Gen. 473 (1982).
 - b. Not exceeding current rate is equivalent to the current rate less any unobligated balance carried over into present year.
 - c. Funding frequently is at a level other than a "continuing one."
2. An agency follows its historic pattern of obligations.
 - a. A Continuing Resolution usually is enacted to cover a limited period of time.
 - b. A Continuing Resolution technically appropriates the full annual amount.

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3. OMB apportions funds appropriated by a Continuing Resolution as well as by regular appropriations acts. 31 U.S.C. § 1512, AR 37-1, para. 6-9(b).
4. A Continuing Resolution is interpreted as appropriating sufficient funds to liquidate due debts based on validly executed contracts from previous fiscal years.
5. Obligations incurred under a Continuing Resolution were still valid even though they subsequently exceeded the final appropriation from Congress. Treasury Withdrawal of Appropriation Warrants for Programs Operating Under Continuing Resolution 62 Comp. Gen. 9 (1982), Staff Sergeant Frank D. Carr, USMC--Transferred Service Member--Dislocation Allowance, 67 Comp. Gen. 474 (1988).

C. PROJECTS OR ACTIVITIES

1. Refers to total appropriations when determining either which programs are covered by the Continuing Resolution or the rate for operations.
2. Refers to a specific activity when determining whether an activity was authorized or carried out in a previous Fiscal Year. Chairman, National Advisory Council on Extension and Continuing Education, 52 Comp. Gen. 270 (1972), Special Defense Acquisition Fund 66 Comp. Gen. 484 (1987).

D. DURATION

1. Enactment of the regular appropriations bill.

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2. Fixed cut-off date.

3. Entire Fiscal Year.

E. RELATIONSHIP OF CONTINUING RESOLUTION TO OTHER
LEGISLATION

1. A Continuing Resolution often appropriates funds to continue projects "not otherwise provided for."
2. When bills or budget estimates are referenced, their status on the date the Continuing Resolution becomes law is controlling.
3. The term "more restrictive authority," means the version of the bill appropriating less money or giving the agency less discretion.
4. Specific inclusion of a program in a Continuing Resolution is sufficient for funding despite lack of authorizing legislation. Authority to Continue Domestic Food Programs Under Continuing Resolution 55 Comp. Gen. 289 (1975).

VII. CONCLUSION